IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Levy	Art Unit: 2623
Application No: 10/797,920	Confirmation No.: 3347
Filed: March 9, 2004	VIA ELECTRONIC FILING
For: METHOD AND APPARATUS FOR CONTENT IDENTIFICATION/CONTROL	
Examiner: Corbo, Nicholas T	
Date: April 26, 2010	

REPLY BRIEF

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Sir:

   This Reply Brief is responsive to the *Examiner's Answer* mailed February 24, 2010.

I.   Claim 4 (§102 Roese) – Reply to Examiner's Responses "2A," "2C" and "2E"[1] (Relation Between Domains)

The *Examiner's Answer* argues that the tag of Roese can have one of several limitations, e.g., limiting distribution of tagged data to a device, room, building, campus, city or country.

While correct, Appellant respectfully submits it misses the point. Roese's alternate limitations are not the two different "states" required by claim 4. In particular, the disputed limitation of claim 4 calls for "additional data" that signifies either:

> 1. It is not permissible to send a copy of the content data to <u>any</u> second destination address; or
> 2. It is not permissible to send a copy of the content data to any second destination address <u>except to a second destination address within a domain that also includes the first destination address.</u>

Roese's tag can signal one of several different limitations, but they are all of a third class, *i.e.*:

> 3. It is not permissible to send a copy of the content data to any second destination address <u>except in a particular physical location</u>[2] (e.g., device, room, building, campus, city or country).

Roese does not teach limiting distribution of content data to a *second* destination address <u>as a function of the *first* destination address.</u> There is no teaching in Roese that conditions re-distribution on a relation between two addresses, as claimed.

Rather, the re-distribution decision in Roese is based absolutely on location – not on a relationship between addresses.

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[1]   *Examiner's Answer*, pages 16-18.
[2]   *See, e.g.,* the title of Roese's application, "*Location*-based access control in a data network."

In its *Response to Argument*, the Office inserts a concept of "domain" in Roese that is not found in Roese's disclosure.[3] It will be recognized that the identified Roese "domains" (campus, city, etc.) are location-based, not address-based. (The construction of the claimed "domain" as being address-based derives from the claim language, e.g., "…a second destination address within a <u>domain</u> that also includes the first destination address…")

The fact that a campus may form part of a city does not mean the campus and the city share the same address domain.

While Roese's and Appellant's result may be the same in particular instances, Appellant is not claiming the result, but rather a particular method. That particular method is not anticipated by Roese.

II.   Claim 4 (§102 Roese) – Reply to Examiner's Response "2B"[4] ("Home" as "Distributor")

The *Examiner's Answer* urges that the broadest reasonable interpretation of claim 4 includes a "home" as being a distributor of entertainment content.[5]

Appellant respectfully submits such interpretation is not reasonable. One reason is because the claim is phrased as a method of providing entertainment content "from a distributor to a home." The juxtaposition of the two terms in the claim is evidence that they are to be given distinct meanings.

Another is that it defies common experience, as noted in the Appeal Brief.

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[3]   The term "domain" is not used in Roese, except in unrelated contexts in paragraphs [0060] and [0130]. Compare usages in *Examiner's Answer*, at page 16, line 16; and page 17, line 13.
[4]   *Examiner's Answer*, pages 16-17.
[5]   Claim 4 is a method of providing entertainment content "from a distributor to a home."

While the Office should apply the broadest reasonable construction to a claim, such construction must have limits. The construction argued by the Office essentially renders the "home" limitation meaningless.

III.   Claim 4 (§102 Roese) – Reply to Examiner's Response "2D"[6] ("Single Family")

Claim 4 recites "said domain comprises networked devices associated with a single family."

In the *Examiner's Answer*, the Office newly offers the definition that the claim term "family" means "any group of related things."[7]

Again, Appellant respectfully submits that such interpretation goes beyond the broadest reasonable construction of the term.

The term "domain" already connotes a group of related things. Interpreting "a single family" to mean nothing more than "any group of related things" renders the "single family" limitation redundant, and thus meaningless. This is contrary to the requirement that each limitation in a claim be given meaning.

Each of the points noted above in Sections I - III is individually sufficient to require reversal of the anticipation rejection of claim 4.

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6   *Examiner's Answer*, pages 17-18.
7   *Examiner's Answer,* page 17, last two lines.

IV.   Claim 7 (§102 Roese) – Reply to Examiner's Response "3"[8]

The *Examiner's Answer* newly cites Roese's paragraphs [0096] – [0099] as teaching the limitation added to claim 4 by dependent claim 7.

Citation of these additional paragraphs does not cure the deficiency.

Claim 7 adds to claim 4 the further limitation that, even within the same domain, entertainment content can be re-distributed only to a second physical location that is physically proximate to the first physical location. (E.g., a user may not transmit content from a New York home to the user's vacation home in Colorado – even if both addresses share the same domain.)

The newly cited paragraphs again concern location-based restrictions on the distribution of content. But they do not teach that copying of data in a packet should be permitted only if the destination physical location is physically proximate to the first physical location.

V.   Claim 8 (§102 Roese) – Reply to Examiner's Response "4"[9]

The *Examiner's Answer* argues that "common domain" is not defined in the claim, and so may properly be construed to encompass Roese's arrangement.

Appellant respectfully disagrees with this conclusion. The claimed "common domain" refers to a network address-sense of the term. The language of claim 1 makes this clear, e.g., by its reference to an IP packet having header data including a first destination address, and its reference to "…a second destination address within a domain that also includes the first destination address…" Roese does not involve such any such "common domain."

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[8]   *Examiner's Answer*, page 18.
[9]   *Examiner's Answer*, page 19.

The *Examiner's Answer* conflates network address domains and physical locations. Consider the "campus boundary" example mentioned in the Examiner's Answer.[10] Four students may be within the boundary of a campus. One may have a desktop computer wired to the school's Ethernet network. Another may have an Apple iPhone that is served by a wireless AT&T network. Another may have a laptop equipped with a data card that links to the Verizon EV-DO network. The fourth may connect to an unencrypted WiFi network of a homeowner near campus, served by Comcast. Each receives data directed to a different address domain.

Physical location and network address domain are distinct concepts. The former does not anticipate the latter.

VI.   Claim 9 (§102 Roese) – Reply to Examiner's Response "5"[11]

The *Examiner's Answer* newly cites Roese paragraphs [0096] – [0099] in support of the rejection. Despite such expansion of the rejection, Roese still does not teach "…first and second destination address both correspond to network devices associated with a single family," as claimed. The Office's construction essentially reads the "family" limitation out of the claim, as noted earlier in Section III.

VII.   Claims 11, 13, 14, 15, and 16 (§102 Roese) – Reply to Examiner's Responses "6" – "10"[12]

While independent claim 4 concerned a method as performed by a *distributor* of entertainment content, independent claim 11 concerns a corresponding method as performed by a *recipient* of entertainment content.

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[10]   *Examiner's Answer*, page 19, halfway down.
[11]   *Examiner's Answer*, pages 19-20.
[12]   *Examiner's Answer*, pages 20-22.

Many of the limitations of claim 11 are similar, however, to limitations of claim 4. Accordingly, many the deficiencies of Roese noted earlier in connection with claim 4 apply likewise to claim 11 (an exception being the "family" limitation).

Likewise with dependent claim 13 (which introduces the "family" limitation); claim 14 (*c.f.*, claim 7), claim 15 (*c.f.*, claim 8), and claim 16 (*c.f.*, claim 13).

Since points argued in the *Examiner's Answer* concerning claims 11 and 13-16 were earlier addressed by Appellant in connection with claim 4 and its dependents, they are not repeated here.

VIII.   Claim 17 (§102 Roese) – Reply to Examiner's Response "11"[13]

The *Examiner's Answer* contends that Appellant argued a feature not recited in the rejected claim, when the *Appeal Brief* stated "Roese does not teach the use of a firewall to determine whether devices are physically remote or not."

Appellant respectfully disagrees. The just-quoted statement is believed to fairly capture an aspect of claim 17, which reads (underlining added):

> 17. *The method of claim 14 wherein the method includes determining <u>whether</u> the second physical location is <u>physically remote</u> from the first physically location by reference to whether the second destination address is served by a common <u>firewall</u> with the first destination address.*[14]

(The placement of the first device at the first location, and the second device at the second location, is found in claim 11, from which this claim depends.)

Roese's failure, in paragraph [0098] cited in the Final Rejection, to teach use of a firewall to determine whether devices are physically remote or not, does not seem to be disputed by the Office.

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[13]   *Examiner's Answer*, page 22.
[14]   In preparation of this Reply Brief, Appellant just noticed the typo "…first physically location…" which will be corrected post-appeal.

IX.   Claim 1 (§103 Roese & Levy) – Reply to Examiner's Response "12A"[15] (Define a Geographical Boundary)

Claim 1 requires use of a firewall to "*define – at least in part*" a geographical boundary.

The *Examiner's Answer* contends the "at least in part" language renders the claim indefinite or ambiguous.[16] If a new rejection is intended, Appellant respectfully requests that procedures detailed therefor in the MPEP be followed.

On the merits, no indefiniteness or ambiguity is believed introduced by such language. Such usage is common in US patents. (A check of the PTO web site finds over 100,000 granted patents with claims containing this phrase.)

Roese uses a firewall only to *enforce* a location-based determination made by another system component (paragraph [0098]). Roese does not – in whole or in part – use a firewall to *define* a geographical boundary, across which certain content should not pass.

X.   Claim 1 (§103 Roese & Levy) – Reply to Examiner's Response "12B"[17] (Single-Bit Flags)

The *Examiner's Answer* contends that Roese teaches flags. Whether or not that is the case, Roese has no teaching of any "single-bit" flags as required by claim 1.

Appellant respectfully submits that the construction being implicitly argued by the Office (e.g., that all data representations are a series of single bit flags) renders the "single-bit flags" limitation meaningless.

Claims must be construed in a manner giving effect to the claim language. The Office's construction of claim 1 fails to do so.

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[15]   *Examiner's Answer*, pages 22-23.
[16]   *Examiner's Answer*, page 22, 3d line from bottom.
[17]   *Examiner's Answer*, page 23.

XI.   Claim 1 (§103 Roese & Levy) – Reply to Examiner's Response "12C"[18] (Watermarking)

The *Examiner's Answer* quotes Appellant out of context ("Roese 'does not teach or suggest watermarking.'")

Appellant's point was Levy takes – *as a given* – that the content is watermarked, and then addresses how to prevent the existing watermark from being degraded by various content conversions.

The Office's rationale for the combination *presumes* that the content is *already* watermarked. It proposes *"transmarking an initial digital watermark of the content into watermark payloads in each packet..."* But this presumes too much. It presumes there <u>is</u> "an initial digital watermark." Roese does not teach one. The obviousness rationale is grounded on a faulty premise.

XII.   Claim 1 (§103 Roese & Levy) – Reply to Examiner's Response "12D"[19] (Watermark Securely Provides Restriction Information Hidden From User)

The Final Rejection's motivation for combining Levy with Roese is said to be use of a watermark to securely provide restriction information <u>hidden from a user</u>.[20]

The *Examiner's Answer* somewhat shifts to a different rationale – one based on redundancy of data as a guard against certain information becoming corrupt or unreadable.[21]

At issue, however, is the rationale offered in the Final Rejection.

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[18]   *Examiner's Answer*, pages 23-24.
[19]   *Examiner's Answer*, page 24.
[20]   *Final Rejection* , page 11, line 11.
[21]   *Examiner's Answer*, page 24, lines 13-18.

As noted in the *Appeal Brief*, the stated rationale of providing information "hidden from a user" is illusory, since the claim requires that flag bits in the header are related to the payload of the watermark in the content data.

The rejection fails for want of a rational underpinning. The Final Rejection fails to address why an artisan would have provided flag bits in packet headers – related to the payload of a watermark in content data. No reason for such dualistic approach is offered.

The *Examiner's Answer* argues (page 24, lines18-19) that elements being duplicative does not render the combination unobvious. But Appellants respectfully submit that this impermissibly shifts the burden. The burden is on the Office to establish that the "duplicative" arrangement is obvious. This it has not done.

Each of the points noted above in Sections IX - XII is individually sufficient to require reversal of the obviousness rejection of claim 1.

XIII.   Claim 25 (§103 Roese & Levy) – Reply to Examiner's Response "14A"[22] (Home Network)

The *Examiner's Answer* is correct that any traffic sent from a home computer will necessarily be divided into multiple IP packets in order to be transported under the TCP/IP standard.

Appellant's point, however, was that Roese does not teach any home network that performs redistribution of video entertainment content, which is the arrangement with which claim 25 is concerned. (The only reference to a "home" in Roese is as a recipient of content – not as a redistributor.) The *Examiner's Answer* fails to identify any teaching in Roese curing the noted deficiency.

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[22]   *Examiner's Answer*, pages 25-26.

XIV.   Claim 25 (§103 Roese & Levy) – Reply to Examiner's Response "14B"[23] (Redistribution from Home Network)

The *Examiner's Answer* again blurs notions of physical locations and electronic networks, in connection with the "home network" and "different network" limitations of claim 25.

The Final Rejection contends that Roese teaches all limitations of claim 25, except aspects of the "ascertaining…" and "including…" clauses. Not so.

Roese concerns limiting the physical locations to which content may be distributed. Claim 25, in contrast, requires refusing to transmit packets through a networking device to a different network if included data indicates that video entertainment should not be redistributed from the consumer's home network.

Physical location and computer networks are distinct concepts. (E.g., a single room, or house, can be served by plural networks.) Sometimes systems based on these different concepts can yield the same result. Again, however, Appellant is not claiming the result, but rather a particular method. That particular method is not taught by Roese. As such, a predicate for the obviousness rejection of claim 25 fails.

XV.   Claim 25 (§103 Roese & Levy) – Reply to Examiner's Response "14C"[24] (Rationale for Combination)

The *Examiner's Answer* refers to its discussion of claim 1 regarding the rationale to combine Levy with Rose. Appellant thus similarly refers to the corresponding reply, noted above in Section XII.

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[23]   *Examiner's Answer*, page 25.

Each of the points noted above in Sections XIII - XV(XII) is individually sufficient to require reversal of the obviousness rejection of claim 25.

XVI.   Claim 26 (§103 Roese & Levy) – Reply to Examiner's Response "15"[25]

Appellant respectfully disagrees with the contention, in the *Examiner's Answer*, that the *Appeal Brief* attacks references individually in contesting the obviousness rejection of claim 26.

Rather, Appellant is arguing that Levy does not teach that for which it has been cited.

As noted earlier, Levy is concerned with maintaining the integrity of watermarks through different forms of signal processing, which might cause embedded watermarks to be corrupted or lost.

The limitation added by claim 26, however, does not involve watermarks. It states that the "ascertaining..." of claim 25 includes extracting restriction information from header data conveyed with video entertainment (i.e., alternative "a" in the "ascertaining..." clause of claim 25).

The balance of claim 25 then requires that this extracted restriction information is included in header portions of each of plural IP packets.

Levy's watermark teachings are not relevant in such context, wherein data is extracted from a header, and then placed into multiple headers. Rather, his teachings relate to watermark-based arrangements.

The Final Rejection's reliance on Levy to fill the shortcoming of Roese is thus misplaced.

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[24]   *Examiner's Answer*, page 26.

XVII. <u>Claim 28 (§103 Roese & Levy) – Reply to Examiner's Response "16"</u>[26]

In connection with claim 28, the *Examiner's Answer* again contends that Appellant is attacking the references individually.

Again, Appellant respectfully disagrees.

The Final Rejection contends that Roese teaches all limitations of claim 28 except for the "discerning the restriction information…" limitation, which is said to be taught by Levy.

However, the claim requires that this "discerning…" occur by the consumer's computing device – before the packets are sent to the consumer's home networking device. Levy fails to teach this.

Since the art does not teach that for which it has been cited, the *Final Rejection* has failed to meet its burden of establishing obviousness.

XVIII.   <u>Claim 27 (§103 Roese & Levy '899 & Levy '844) – Reply to Examiner's</u> <u>Response "17"</u>[27]

The *Examiner's Answer* referred to its earlier Response re claim 1 in connection with claim 27. However, claim 1 involved only Roese and Levy '899. The rejection of claim 27 additional involves Levy '844.

Appellant respectfully submits that the rationale for combining Levy '844 with Roese and Levy '899 in the claimed manner is impermissibly based on hindsight, rather than the required "articulated reasoning with some rational underpinning."

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[25]   *Examiner's Answer*, page 26.
[26]   *Examiner's Answer*, pages 26-27.
[27]   *Examiner's Answer*, page 27.

XIX. <u>CONCLUSION</u>

The Board is requested to issue Findings of Fact consistent with the points in Appellant's briefs, and reverse the final rejections of the claims.

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